

# HOUSE . . . . . No. 649

By Mr. Fallon of Malden, petition of Christopher G. Fallon and Steven A. Tolman relative to the storage of personal property upon execution of a summary process judgment. The Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

### AN ACT RELATIVE TO STORAGE OF PERSONAL PROPERTY UPON EXECUTION OF A SUMMARY PROCESS JUDGMENT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Section 4 of chapter 105 of the General Laws, as  
2     appearing in the 2002 Official Edition, is hereby amended by  
3     adding the following paragraph:— This section shall not apply to  
4     property stored pursuant to section 4 of chapter 239.

1     SECTION 2. Section 3 of chapter 239 of the General Laws, as  
2     so appearing, is hereby amended by striking out the third para-  
3     graph and inserting in place thereof the following paragraph: The  
4     notice shall contain (1) the signature, full name, full business  
5     address and business telephone number of the officer; (2) the  
6     name of the court and the docket number of the action; (3) a state-  
7     ment that the officer will place any personal property remaining  
8     on the premises at the time the execution is levied in storage at a  
9     licensed public warehouse, and the full name, full business  
10    address, and business telephone number of the warehouse to be  
11    used;

12    (4) a statement that the warehouse's storage rates may be  
13    ascertained by contacting the commissioner of public safety and  
14    the address and telephone number of such agency; (5) a statement  
15    that the warehouse may sell at auction any property that is  
16    unclaimed after 6 months and may retain that portion of the pro-  
17    ceeds necessary to compensate him for any unpaid storage fees

18 accrued as of the date of the auction, except as provided in  
19 section 4; and (6) a statement that the defendant should notify the  
20 warehouse in writing at the business address listed in the notice  
21 of any change in the defendant's mailing address. The notice  
22 referred to in this section shall be served in the same manner as  
23 the summary process summons and complaint and shall be filed in  
24 the court that issued the execution.

25 The officer shall select the public warehouse identified in the  
26 notice described in the preceding paragraph in a manner calcu-  
27 lated to ensure that the defendant's personal property will be  
28 stored within a reasonable distance of the premises at issue in the  
29 summary process action.

1 SECTION 3. Said chapter 239 is hereby further amended by  
2 striking out section 4, as so appearing, and inserting in place  
3 thereof the following section:—

4 Section 4. (a) If an officer, serving an execution issued on a  
5 judgment for the plaintiff for possession of land or tenements,  
6 removes personal property, belonging to a person other than the  
7 plaintiff, from the land or tenements, he shall forthwith cause it to  
8 be stored for the benefit of the owners thereof. Such property shall  
9 be stored with the licensed public warehouse identified in the  
10 notice provided to the defendant pursuant to section 3, except that  
11 the officer shall store the property with a warehouse or other  
12 storage facility of the defendant's choosing if the defendant noti-  
13 fies the officer of his choice in writing at or before the time of  
14 removal of the property. Such warehouse or storage facility must  
15 be located within a reasonable distance of the premises from  
16 which the property has been removed. The officer need not  
17 accompany the mover after the defendant's property is removed  
18 from the premises listed in the execution. Should the defendant  
19 choose the place of storage pursuant to this section, the defendant  
20 or his designee shall be present at the place of storage at the time  
21 of delivery of the property and shall acknowledge receipt of the  
22 property in writing to the mover delivering the property.

23 The officer shall file with the court that issued the summary  
24 process judgment and provide to the defendant in hand, or if the  
25 defendant is not present at the time of execution by first class mail  
26 to the defendant's last and best known address, an inventory pre-

27 pared by the mover containing a description of the goods removed  
28 or of the packages containing said goods, as well as the name,  
29 address and signature of the mover or his representative.

30 (b) Any public warehouseman who accepts property for storage  
31 pursuant to this section: (1) shall be licensed and bonded pursuant  
32 to section 1 of chapter 105; (2) shall file its current storage rates  
33 with the commissioner of public safety and shall not change such  
34 rates more than once annually, unless the commissioner of public  
35 safety or his designee gives prior written approval upon a showing  
36 of extraordinary circumstances; (3) shall not impose charges for  
37 storage under this section in excess of the rates filed with and not  
38 rejected by the commissioner of public safety at the time of  
39 service of the notice provided for in section 3; (4) shall not  
40 impose charges for storage under this section in excess of the fair  
41 market rates for storage facilities of similar quality in the ware-  
42 house's general locale; (5) shall not impose charges other than  
43 those for the actual storage of goods pursuant to this section,  
44 including, but not limited to, docking fees, warehouse labor fees,  
45 administrative, fees, or other similar fees imposed in addition to  
46 the storage rates listed with the commissioner of public safety;  
47 (6) shall not impose minimum fees or otherwise charge storage  
48 fees for any period other than the period of actual storage;  
49 (7) shall credit toward the defendant's costs of storage any amount  
50 paid by the plaintiff or other third party in connection with the  
51 storage of the property in question; (8) shall send by first class  
52 mail to the defendant's last and best known address monthly state-  
53 ments of the amount of advances made and of liabilities incurred  
54 for which the warehouseman claims a lien or security interest pur-  
55 suant to this section; and (9) shall insure the defendant's property  
56 against fire and theft in the amount of no less than \$10,000. A  
57 warehouseman who accepts goods under this section is liable for any  
58 loss or injury to the goods caused by his or her failure to exercise  
59 such care in regard to them as a reasonably careful person would  
60 exercise under like circumstances but unless otherwise agreed or  
61 provided in this section, the warehouseman is not liable for damages  
62 which could not have been avoided by the exercise of such care.  
63 No person shall be required to release a warehouseman from liability  
64 as a condition of release of any stored property.

65 (c) The plaintiff in the summary process action shall pay the  
66 costs of removing the property to the place of storage. The plain-  
67 tiff shall be entitled to reimbursement by the defendant for any  
68 costs and fees so advanced.

69 (d) Upon receipt of personal property under this section, a  
70 public warehouse shall forthwith, but no later than 7 days after  
71 the removal of the property from the land or tenements at issue in  
72 the summary process action, issue a warehouse receipt that com-  
73 plies with the requirements of section 7-202 of chapter 106. Such  
74 receipt shall contain as additional terms: (1) a statement that the  
75 warehouse may sell any property unclaimed after six months and  
76 retain that portion of the proceeds necessary to compensate the  
77 warehouse for lawful storage fees actually accrued as of the date  
78 of the auction, except as provided in this section; (2) a list of the  
79 warehouse's storage rates and a statement that such rates may be  
80 verified by contacting the commissioner of public safety, as well  
81 as the address and telephone number of such agency; (3) a con-  
82 spicuous statement that the defendant should notify the ware-  
83 houser in writing at the business address listed in the notice of any  
84 change in the defendant's mailing address; (4) a description of the  
85 applicable procedures for reclaiming the stored property,  
86 including, but not limited to, a statement that the defendant is  
87 entitled to reclaim items of personal or sentimental value but lim-  
88 ited auction value once during the period of storage without pay-  
89 ment of any fee and that the defendant shall be entitled to  
90 purchase individual items at any auction held to enforce the ware-  
91 houser's lien created under this section and an identification of the  
92 publication in which any such auction will be advertised pursuant  
93 to subsection (f) of section 7-210 of said chapter 106. A duplicate  
94 copy of the warehouse receipt shall be kept on file at the place of  
95 storage and the original shall be served by receipted mail or hand  
96 delivery to the defendant at his last and best known address. The  
97 warehouse shall keep separate the goods covered by each receipt  
98 so as to permit at all times identification and delivery of those  
99 goods. A warehouse who fails to comply with the requirements  
100 of this subsection shall be liable for damages caused by the omis-  
101 sion to a person injured thereby.

102 (e) Any warehouse who accepts personal property pursuant to  
103 this section shall have a lien thereon for charges for storage,

104 insofar as such charges are imposed in accordance with this  
105 section. The lien shall not be enforced by sale or disposal of the  
106 property until it has been kept in storage for at least 6 months.  
107 Thereafter, the warehouser may enforce the lien in the manner  
108 provided for in subsection (2) of section 7-210 of chapter 106,  
109 except as otherwise provided in this section. The defendant shall  
110 be entitled to postpone the sale or disposal of his property for 3  
111 months upon payment of one half of all storage fees incurred plus  
112 costs reasonably incurred in preparation for their sale pursuant to  
113 law. The warehouser may satisfy his lien from the proceeds of any  
114 sale or disposition under this section but must hold the balance for  
115 delivery on the demand of any person to whom he would have  
116 been bound to deliver the goods. A warehouser's failure to  
117 comply with any of the requirements of this section shall result in  
118 the forfeiture of his lien.

119 (f) The defendant may access his stored property once, without  
120 charge or payment of storage fees, either to inspect the property or  
121 to remove items having primarily personal or sentimental value,  
122 or both. Items having primarily personal or sentimental value,  
123 shall include but not be limited to photographs, passports, docu-  
124 ments, funeral urns, and the like. All personal property stored  
125 under this section may be reclaimed at any time upon payment of  
126 — all storage fees lawfully owed by the defendant. If the property  
127 is sold at auction, the defendant shall be entitled to purchase the  
128 property in bloc or in parcels, regardless of the terms of the public  
129 sale.

130 The failure of any third party to pay monies owed by him to the  
131 warehouser shall not affect the rights of the property owner to  
132 reclaim property under this subsection.

133 (g) A warehouser who violates this section shall pay a civil  
134 penalty of not more than \$5,000, in an amount to be determined  
135 by the commissioner of public safety after notice and an opportu-  
136 nity for an adjudicatory hearing under chapter 30A. The commis-  
137 sioner or his or her designee may at any time conduct an  
138 inspection of a public warehouse storing goods under this section  
139 for the purpose of assessing compliance with applicable health  
140 and safety codes and the requirements of this section. The com-  
141 missioner may reject the rates filed by a warehouser for storage  
142 pursuant to this section if the commissioner determines that such

143 rates are not commercially reasonable or otherwise violate this  
144 section. The failure of the commissioner to reject a warehouse's  
145 rates shall not create a presumption that such rates are commer-  
146 cially reasonable for purposes of liability under chapter 93A or  
147 this section.

148 (h) Notwithstanding any civil penalty imposed pursuant to sub-  
149 section (g), the defendant may petition the court in which the sum-  
150 mary process action was heard for damages or injunctive relief in  
151 connection with any violation of this section. A violation of this  
152 section shall also be a violation of section 2 of chapter 93A.